

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

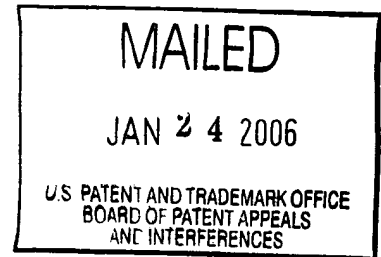
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JACK D. PATTERSON

Appeal No. 2005-2684
Application No. 09/881,536

ON BRIEF



Before BARRETT, DIXON and SAADAT, Administrative Patent Judges.
SAADAT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the Examiner's final rejection of claims 1-12. Claims 13-16 have been withdrawn from consideration as drawn to an unelected invention.

We affirm-in-part.

BACKGROUND

Appellant's invention is directed to a pre-assembled, connectionless data link assembly for providing electronic communication between the engine controller, the transmission controller and the anti-lock brake system controller. According

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to Appellant, the pre-assembled arrangement eliminates the problems associated with improper connections and the requirement for a large number of parts in inventory (specification, page 2). An understanding of the invention can be derived from a reading of exemplary independent claim 1, which is reproduced bellow:

1. An electronically controlled vehicle drivetrain, comprising:

an electronically controlled engine including an electronic engine controller;

an electronically controlled automated mechanical transmission including an electronic transmission controller;

a pre-assembled data link assembly for providing electronic communication between said engine controller and said transmission controller, said pre-assembled data link assembly comprising a trunk portion having first and second ends, an engine shunt portion spliced into said trunk portion, a transmission shunt portion spliced into said trunk portion, a first termination resistor located at first end of said trunk portion, and a second termination resistor located at said second end of said trunk portion.

The Examiner relies on the following prior art references:

Will	4,929,477	May. 29, 1990
Stone et al. (Stone)	6,257,923	Jul. 10, 2001
		(filed Feb. 3, 2000)

Appellant's admitted prior art (APA), Description of the Related Art in pages 1-2 of the Specification and Figure 2.

Claims 1-3, 6-9 and 12 stand rejected under 35 U.S.C.

§ 103(a) as being unpatentable over APA.

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Claims 4, 5, 10 and 11 stand rejected under 35 U.S.C.
§ 103(a) as being unpatentable over APA, Stone and Will.

Rather than reiterate the opposing arguments, reference is made to the briefs and answer for the respective positions of Appellant and the Examiner. Only those arguments actually made by Appellant have been considered in this decision. Arguments which Appellant could have made but chose not to make in the briefs have not been considered (37 CFR § 41.37(c)(1)(vii)).

CLAIM GROUPING

Appellant indicates that claims stand or fall together as four separate groups and argues the claims according to this grouping (brief, page 5). In accordance with this grouping, and pursuant to 37 CFR § 1.192(c)(5), we choose one claim from each group and will limit our review of the appeal to claims 1-4 as the representative claims of their corresponding groups.

OPINION

With respect to claim 1, Appellant argues that the claimed shunt harness formed by a trunk portion and one more shunt portion spliced into the trunk portion replaces the use of conventional "T" connectors (brief, page 7). Appellant further asserts that the claimed subject matter describes a connectionless data link assembly which replaces the prior art

plugged connections (reply brief, page 3). The Examiner responds by pointing out that a shunt portion "spliced into said trunk portion" defines the method by which the connection is formed wherein the final product is merely a shunt portion connected to a trunk portion (answer, page 3).

Initially, we note that the claims merely require that the shunt portion be "spliced" into the trunk portion without reciting any limitation to indicate whether the assembly is "connectionless" or "permanent." Therefore, to the extent claimed, spliced shunt portions may be removably connected to the trunk portions. In view of the broad scope of the claims, we remain unconvinced by Appellant's arguments (brief, page 8) that the claimed subject matter would not have been obvious over the "T" connectors 66 and the backbone connectors 62 of APA.

Appellant further asserts that secondary considerations, such as reduction in assembly errors and inventory requirements, support the novelty of the claimed subject matter (brief, page 8). The Examiner responds that making a pre-assembled data link would have been obvious since only routine skill in the art is needed to put together the pieces and form a one piece article (answer, page 4). We agree with the Examiner that forming a pre-assembled data link is within the skill level of ordinary artisan

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who, in order to reduce assembly errors, would have performed the assembly of parts in a more controlled environment prior to supplying the data link to the vehicle manufacturing area.

A motivation to combine or modify prior art references may be found in the nature of the problem to be solved. Ruiz v. A.B. Chance Co., 357 F.3d 1270, 1276, 69 USPQ2d 1686,1690 (Fed. Cir. 2004). Also, evidence of a suggestion, teaching, or motivation to modify a reference may flow from the prior art references themselves, the knowledge of one of ordinary skill in the art, or, in some cases, from the nature of the problem to be solved, see Pro-Mold & Tool Co. v. Great Lakes Plastics, Inc., 75 F.3d 1568, 1573, 37 USPQ2d 1626, 1630 (Fed. Cir. 1996). Thus, as stated by the Examiner (answer, page 4), avoiding the assembly mistakes described in APA would have motivated one of ordinary skill in the art to pre-assemble the data link in order to ensure accurate and proper connection. Therefore, as the Examiner has established a prima facie case of obviousness with respect to claim 1, we sustain the 35 U.S.C. § 103(a) rejection of claim 1, as well as claims 6-7 and 12, grouped therewith as falling together (brief, page 5) over APA.

Turning now to the rejection of claim 2, we note Appellant's contention with respect to the official notice taken by the

examiner finding the use of a multiplexed cable in the trunk portion as obvious. As there is nothing disclosed in the APA or shown in Figure 2 to indicate the use of a multiplex cable in the trunk portion, otherwise, Appellant would have indicated so, the official notice is not sufficient to establish a prima facie case of obviousness. Therefore, the 35 U.S.C. § 103(a) rejection of claim 2, as well as claim 8, grouped therewith as falling together (brief, page 5) over APA is not sustained.

We also observe that the Examiner's attempt to provide additional evidence¹ in support of the official notice is ineffective and appears more like creating a back door for adding references to the combination. However, our observation does not mean that the Examiner could not have used the publication as a secondary reference based on the disclosed reduction of EMI & RFI as the motivation for combining with APA. Nonetheless, no such rejection is before us.

Next we consider the 35 U.S.C. § 103(a) rejection of claim 3 over APA. Appellant argues that housing the termination resistors in a barrel mold would not have been obvious since the advantages described in the specification would not have been achieved with just any other resistor housing (brief, pages 9-10;

¹ Publication titled "Radox 'Plug & Play' Cable" (Radox), Champlain Cable Corp, 1998.

reply brief, page 5). In response, the Examiner argues that barrel molds or connectors are common forms of connectors available to the ordinary skilled in the art to be used as a cable connector (answer, page 6). The Examiner further asserts that the advantages argued by Appellant are described in the specification as attributed to the pre-assembled data link and not the use of a barrel mold connector (id.).

We are unconvinced by Appellant's argument that the use of barrel mold housing for the termination resistors would not have been obvious. The type of the termination resistors that are disclosed in APA is not indicated to differ from those claimed when the collective teachings of the prior art and the knowledge of the ordinary skilled in the art is taken into consideration. With respect to the question of the unexpected advantages of using a barrel mold housing, we find that Appellant has provided insufficient evidence on this record to overcome the findings that support the obviousness of the claimed subject matter as set forth by the Examiner. Additionally, we agree with the Examiner (answer, page 6) that the use of barrel mold connectors were well known in the art for use with cable connectors. Therefore, we also sustain the 35 U.S.C. § 103(a) rejection of claim 3, as well as claim 9, over APA.

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Finally, with respect to the 35 U.S.C. § 103(a) rejection of claim 4 over APA, Stone and Will, Appellant argues that no motivation for combining the references can be found (brief, page 11; reply brief, page 6). The Examiner points out that the use of a double wall heat shrink cover as a heat shrink tube for media cable used in a car is taught by the references which extends the advantages of such covers to interconnected parts such as the data link assembly of APA (answer, pages 6-7). We agree with the Examiner that the claimed double wall shrink tube is taught by the references and is clearly applied to the shunt and the trunk portions in APA. We also note that while the subject matter of claim 4 relates to a double wall shrink tube for covering the shunt portions, no such cover is required for the connecting area in which the shunt portion is spliced into the trunk portion. Thus, we find that proper motivation is present in the prior art of record as Stone describes the benefits of shrink tube for data connectors in a vehicle as being durable and serviceable (col. 1, lines 31-41). Accordingly, as the Examiner has set forth a prima facie case of obviousness, we sustain the the 35 U.S.C. § 103(a) rejection of claim 4, as well as claims 5, 10 and 11 grouped therewith, over APA, Stone and Will.

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